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OCA FILE

Leg/HPSC  
Rep Swindall

31 May 1988

OCA 1699-88

## MEMORANDUM FOR THE RECORD

SUBJECT: Conversation with Mike O'Neil Re: Swindall Amendment  
to House Intelligence Authorization Bill, H.R. 4387

25X1 1. On 25 May 1988, I spoke by telephone with Mike O'Neil, chief majority counsel for the House Permanent Select Committee on Intelligence, regarding an amendment to be offered to the House intelligence authorization bill (attached). The amendment, to be proposed by Rep. Swindall, seeks to curtail travel in the United States by certain diplomatic personnel and their families suspected of aiding the interception of United States diplomatic, military or intelligence communications or engagement in intelligence activities against the United States Government. This amendment is one similar to one offered by Swindall to the FY88/FY89 State Authorization Bill, which failed to pass. [ ]

25X1 2. I explained to O'Neil that the DCI had previously written a letter to Senator Roth stating that he supports the principle of such an amendment and that we are seeking to determine whether the DCI still adheres to this view. [ ]

25X1 [ ]

25X1 [ ] He made no promises, but made it clear that he wishes to know the DCI's current position before he takes any action.

25X1 I told him we would let him know this as soon as possible. [ ]

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25X1 3. On 26 May 1988, I spoke with [ ] of the  
Defense Intelligence Agency with regard to the same matter. He  
indicated that DIA is totally opposed to this amendment. In  
25X1 addition, he has spoken with staff members of the Senate  
Intelligence Committee who are inclined to delete it in  
conference, if necessary. [ ]

Legislation Division  
Office of Congressional Affairs

Attachment

25X1 OCA/LEG [ ] (31 May 1988)

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S E C R E T

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AMENDMENT TO H.R. 4387, AS REPORTED  
OFFERED BY MR. SWINDALL OF GEORGIA

At the end of the bill, add the following new title:

TITLE VIII--ANTI-ESPIONAGE ACT OF 1988

SHORT TITLE

SEC. 801. This title may be cited as the ``Anti-Espionage Act of 1988``.

ANTI-ESPIONAGE

SEC. 802. Title II of the State Department Basic Authorities Act of 1956 (22 U.S.C. 4301 et seq.) is amended by adding at the end the following new section:

``SEC. 217. IMPLEMENTATION OF TRAVEL RESTRICTIONS TO

PERSONNEL OF CERTAIN COUNTRIES AND ENTITIES.

``(a) Travel in the United States by the personnel of a foreign mission of a foreign country or foreign entity described in subsection (c)(1) shall not be permitted if, in the judgment of the Secretary of Defense (after consultation with the Secretary of State<sup>and the Sec</sup>), such travel might <sup>contribute to</sup> ~~substantially~~ ~~improve~~ the capability of that country or entity to intercept communications involving United States Government diplomatic, military, or intelligence matters.

``(b) Travel in the United States by the personnel of a

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1 foreign mission of a foreign country or foreign entity  
2 described in subsection (c)(1) shall not be permitted if, in  
3 the judgment of the Director of the Federal Bureau of  
4 Investigation (after consultation with the Secretary of  
5 State), such travel might <sup>and the DSI</sup> ~~substantially improve~~ <sup>contribute to</sup> the  
6 capability of that country or entity to engage in  
7 intelligence activities directed against the United States  
8 Government, other than the intelligence activities described  
9 in subsection (a).

10 `` (c)(1) For the purposes of this section, the term  
11 'foreign country or foreign entity' means--

12 `` (A) any country listed as a Communist country in  
13 section 620(f) of the Foreign Assistance Act of 1961;

14 `` (B) any country determined by the Secretary of  
15 State, for purposes of section 6(j) of the Export  
16 Administration Act of 1979, to be a country which has  
17 repeatedly provided support for acts of international  
18 terrorism;

19 `` (C) any other country or foreign entity which  
20 engages in intelligence activities in the United States  
21 which are adverse to the national security interests of  
22 the United States; and

23 `` (D) any country or entity with respect to which the  
24 United States withholds funds from the United Nations for  
25 International Organizations, Conferences, or Programs

1 under section 114 of the Department of State  
2 Authorization Act, Fiscal Years 1984 and 1985 (22 U.S.C.  
3 287e, note) or section 527 of the Foreign Operations,  
4 Export Financing, and Related Programs Appropriations  
5 Act, 1988 (Public Law 100-202).

6 `` (2) For the purposes of this section, the term  
7 `personnel of a foreign mission of a foreign country or  
8 foreign entity' includes the family members and dependents of  
9 such personnel, but such term does not include persons who  
10 are nationals or permanent resident aliens of the United  
11 States.

12 `` (d) The Secretary of Defense and the Director of the  
13 Federal Bureau of Investigation shall transmit to the Select  
14 Committee on Intelligence and the Committee on Foreign  
15 Relations of the Senate, and to the Permanent Select  
16 Committee on Intelligence and the Committee on Foreign  
17 Affairs of the House of Representatives, not later than 6  
18 months after the date of the enactment of this section, and  
19 not later than every 6 months thereafter, a report on the  
20 actions taken by the Secretary of Defense and the Director of  
21 the Federal Bureau of Investigation in carrying out this  
22 section within the previous 6 months.'`.

TRAVEL RESTRICTIONS AMENDMENT  
(Title 8 of H.R. 4387)

THE ISSUE: Curtailing espionage by foreign diplomats in the U.S. to protect our military secrets and advanced technology from our enemies.

AMENDMENT: Grants the Secretary of Defense and the FBI Director discretion over travel requests to the State Dept. by Communist and terrorist diplomats.

- \* Affects all Communist countries listed in Foreign Assistance Act and all terrorist countries listed in Export Administration Act.

- \* Instead of one executive department overseeing the travel requests of hostile foreign diplomats (as in current law), the amendment creates authority for two additional departments to review diplomatic travel, both of whom have responsibilities which are affected by such travel.

- \* Amendment balances our national security interests with political and diplomatic concerns by creating a system of checks and balances within the executive branch to oversee the travel requests of hostile intelligence operatives on U.S. soil.

- \* Amendment necessary because the current law allows too little input on questions of individual travel from the agencies most concerned with the trips of hostile intelligence personnel in the U.S.

- \* Moreover, State Dept. has not complied with the full Congressional intent of the Foreign Missions Act. It failed to implement last year's compromise travel restriction amendment for six weeks after the deadline and five months after the bill passed. It finally

applying the restrictions, the Dept. chose to bypass such intelligence threats as the Hungarian and Romanian missions to the U.N. The Dept. has also chosen for three years not to fully implement the Roth-Hyde Amendment by allowing Soviet members of the U.N. Secretariat to travel to sensitive closed areas. More recently, the Dept. has granted a travel request to a known KGB agent, who also happens to head the Soviet commission on U.S.-Soviet trade.

\* Last year, in Section 161 of the State Dept. Auth. bill, Reps. Fascell, Mica, Broomfield, and Snowe plugged the loophole in the FMA with respect to the acquisition of American property by hostile foreign diplomats. This was aimed at avoiding another scandal like Soviets occupying Mt. Alto.

\* Section 161 is identical to the substance of my amendment and serves as a precedent for my proposal.

\* The only difference is that, instead of avoiding the prospect of giving the Soviets and their allies real property to spy on U.S. military, diplomatic and intelligence matters, my amendment gives the executive authority to avoid spies having the run of the country.

\* Amendment recognizes that, in addition to the State Department's political and diplomatic interests, diplomatic travel affects the FBI and NSA's internal security responsibilities. These agencies' concerns deserve to be recognized and acted upon.

\* Diplomatic travel involves many competing interests in the executive branch. Therefore, there should be a balance in

with unilateral and final authority over the subject.

- \* Otherwise, the State Dept. will continue to ignore the Congressional intent and mandate in the Foreign Missions Act.

- \* Amendment should not be misinterpreted as a DOD and FBI "veto" over travel requests because both must consult with the Secretary of State before using their authority in the amendment to deny diplomat travel.

- \* No executive branch is free to disregard totally the points of view and desires of another because the head of the department always has the recourse to go to the President to seek resolution of the interagency dispute. In the case of foreign policy or national security related questions, the mechanism clearly rests within the process of the National Security Council.

- \* By offering this amendment, we are allowing the executive branch to specifically target those types of travel which directly threaten U.S. national security, while at the same time respecting the State Dept.'s interests in allowing the nonthreatening types of travel to proceed unimpeded. That ability does not exist now.

- \* Currently, the FBI has no vested or institutional arrangement whereby it can object to individual instances of travel which it deems harmful to national security.

- \* The present law only creates arrangements for broad travel controls rather than finely-tuned restrictions. The current procedures exist for denying a certain type of travel control for



both the FBI and the State Dept. the ability to respond to hostile intelligence activities on an individual basis.

\* As it stands now, the controls have to apply to intelligence personnel as well as nonintelligence personnel in a given embassy.

\* My amendment offers a more sophisticated, "rifle" approach to the problem, instead of the present shotgun approach and thereby protects both diplomatic and counterintelligence interests.

\* This legislation is not opposed by the Intelligence Community.

\* If Congress fails to pass this legislation, it will be saying to the FBI that it does not deserve an institutional means of objecting to hostile intelligence activity and also tell the State Dept. that the Congressional intent of the Foreign Missions Act no longer matters.

\* This amendment differs greatly from last year's approach by not ordering the imposition of specific restrictions. If the FBI and DOD have no disagreements with the State Dept., it will be meaningless.